

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES H. MAXWELL,

Plaintiff,

v.

REAL CHANGE,

Defendant.

Case No. C14-126 JCC

**REPORT AND
RECOMMENDATION**

In 2004, after being granted leave to proceed *in forma pauperis*,¹ James H. Maxwell filed a pro se complaint alleging the disciplinary actions his private employer took against him violated his rights under 28 U.S.C. § 1983. Dkt. 5. On January 6, 2015, the Court dismissed the action on the grounds that § 1983 claims are actionable only against a state actor, not a private party. Dkt. 9. On February 13, 2015, Mr. Maxwell filed a notice of appeal. Dkt. 14.

On March 2, 2015, the Court of Appeals for the Ninth Circuit requested this Court to determine whether Mr. Maxwell's *in forma pauperis* status should be revoked. Dkt. 16. The court recommends that Mr. Maxwell's *in forma pauperis* status be revoked because any appeal of this matter would be frivolous. *See* 28 U.S.C. § 1915(a)(3); *see also Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of *in forma pauperis* status is

¹ *See* Dkt. 4.

1 appropriate where district court finds the appeal to be frivolous). The defendant Real Change is
2 a private party that publishes a newspaper. Generally, a private party, such as Real Change, is
3 not considered to be a state actor who can be held liable under § 1983. *See Price v. Hawaii*, 939
4 F.2d 702, 707-08 (9th Cir. 1991). Where a private party conspires with a state actor to deprive a
5 individual of his or her constitutional rights, the private party may be sued under § 1983. Here,
6 however, Mr. Maxwell has presented nothing showing that Real Change conspired with a state
7 actor to deprive him of his civil rights. Accordingly, Mr. Maxwell's claim against his former
8 private employer is not actionable under § 1983 and his *in forma pauperis* status should be
9 revoked.

10 **OBJECTIONS AND APPEAL**

11 This Report and Recommendation is not an appealable order. Therefore a notice of
12 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
13 assigned District Judge enters a final order regarding this matter. Any objection to this Report
14 and Recommendation must be filed by March 18, 2015.

15 The Clerk should note the matter for **March 20, 2015**, as ready for the District Judge's
16 consideration. Objections shall not exceed five pages. The clerk is directed to provide Mr.
17 Maxwell with a copy of this Recommendation and the attached proposed order.

18 DATED this 4th day of May, 2015.

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BRIAN A. TSUCHIDA
22 United States Magistrate Judge
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